Supreme Court, U. S.
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No. 78-1846

In the

Supreme Court of the United States

OCTOBER TERM, 1978

RAWLIN L. STOVALL and AMERICAN CASH COMMODITIES OF MISSOURI, INC.,

Petitioners,

vs.

JOHN PATTERSON, et al., WILLIAM P. CORKILL, et al., JAMES P. CHAPMAN, EDWARD T. JOYCE, MARTHA JENKINS, JAMES A. BRANDVIK, LOWELL H. JACOBSON, CRAIG E. ANDERSON, ROBERT E. CRONIN,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINION BELOW

The opinions of the Court of Appeals (Pet. App. 1-5 and 7-21) are reported in 490 F.2d 338 (7th Cir. 1979) and in 582 F.2d 180 (7th Cir. 1976).

Based upon the arguments stated below, respondents deem the earlier 1976 decision of the 7th Circuit the actual opinion below being appealed from in the petition for certiorari filed herein.

QUESTIONS PRESENTED

1. May petitioners seeking this Court's writ of certiorari from a second appeal of the case urge matters conclusively determined in a decision over three years ago?

2. Is an award of attorneys' fees to objectors' counsel in a class action, in the manner in which petitioners raise that issue, a matter of such consequence that the issue should be entertained by this Court?

STATEMENT

The petition for certiorari filed in this case on June 11, 1979 by the petitioners cannot be considered by this court, in the opinion of respondents, without simultaneously reviewing the petition for certiorari and the brief for the United States in opposition filed in *United States* v. *Stovall*, No. 78-1494. (See Pet. 4-6) The issues are intertwined to such an extent that the respondents herein adopt the brief of the United States as part of their argument herein. The statement of the case described therein is equally applicable here and incorporated herein.

ARGUMENT

1. A study of the petition for certiorari indicates that the real opinion below sought to be appealed at this late date is in fact the earlier case of *Patterson* v. *Stovall*, 582 F.2d 180, in which a rehearing was denied on January 26, 1976. In that case the petitioners herein filed a petition for rehearing in which their arguments made and rejected were practically identical to the present points advanced now three years later in their petition for certiorari. The headings of those arguments in the earlier *Stovall* case, without more, discloses the untimeliness of the petition. These are:

I. The parties never contemplated and the written settlement agreement never provided that Judge Marovitz in the Criminal case would have the right in the Civil case to order restitution to all depositors under the terms of Fund B.

II. This court's opinion enlarges the authority of Judge Marovitz to make restitution under Title 18 U.S.C. Section 3651 without any review of the full record of the criminal case, without any argument or citations or authority and without any participation by the government in the proceedings.

III. Any court found ambiguity regarding restitution not raised by the parties must be resolved in favor of the criminal defendant or the plea in the criminal case may be withdrawn.

IV. This court's opinion changing the settlement between parties has the effect of eliminating all of the consideration for the settlement which might otherwise have gone to the defendants.

2. The only point which was not the subject of the earlier decision in 1976 is Point III of the questions presented, referring to an award of attorneys' fees to objectors' attorneys. Pet. 17-19) The first two questions presented are:

> I. Whether the Court of Appeals exceeded its jurisdiction when it found that the Appellants had standing to pursue the appeals before the Court in the face of a settlement of the claims of the Appellants on or before the date the Notice of Appeal was filed;
>
> II. Whether the Court of Appeals exceeded its jurisdiction when it rendered an opinion on the effect of a settlement agreement in the civil case before it on the sentence to be imposed by a judgment in a criminal case; (Pet. 6)

are both fully disposed of by the earlier 1976 *Stovall* opinion.

The current petition for certiorari as to Points I and II has not been filed in conformity with Supreme Court Rule 13(1) requiring the petitioner to docket the appeal within 90 days of the entry of a judgment appealed from.

3. Not one of the considerations suggested by this court in Rule 19.1.(b) governing acceptance of review on certiorari is present here.

There is no conflict cited with any decision of another court of appeals on the same matter; there are no important questions of law set forth which could be settled by this court's review of this matter; there are no federal questions which conflict with applicable decisions of this court; there is no showing that the award of attorneys' fees is a substantial departure from the usual course of judicial proceedings; nor is any fact alleged calling for the exercise of this court's supervisory powers.

CONCLUSION

This case is simply not one which merits this Court's review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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